Mathews Readymix, Inc. *and* General Teamsters, Professional, Health Care and Public Employees, Local 137, International Brotherhood of Teamsters, AFL–CIO. Case 20–CA–24698–2

November 7, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On November 3, 1993, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed a brief in answer to the General Counsel's exceptions, and the General Counsel filed a reply brief to the Respondent's answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union and by failing and refusing to bargain with the Union. The complaint further alleges that the Respondent violated Section 8(a)(1) by interrogating employees about their reasons for not signing a decertification petition, soliciting employees to sign such a petition, and requesting employees to solicit other employees to sign a decertification petition. The complaint was amended at hearing to allege that the Respondent violated the Act by interrogating applicants regarding their union membership.

The judge concluded that the Respondent violated Section 8(a)(1) by interrogating employees and by soliciting an employee both to sign a decertification petition and to encourage other employees to sign similar petitions.[1] The judge also concluded, however, that the Respondent's withdrawal of recognition from the Union and its subsequent failure and refusal to bargain was lawful. This conclusion was based on the judge's finding that the Respondent had a good-faith doubt of the Union's continuing majority status, based on decertification petitions signed by a majority of unit employees.

The General Counsel excepts, contending that the decertification petitions were tainted by the Respondent's unlawful conduct and that the Respondent has not met its burden of proof that a majority of the bargaining unit signed the petitions.[2]

For the reasons that follow, we agree with the General Counsel's contention that the decertification petitions were tainted by the Respondent's unlawful conduct. Thus, the Respondent violated Section 8(a)(5) by withdrawing recognition from the Union, by unilaterally changing terms and conditions of employment, and by failing to furnish requested information to the Union.

A. *Facts*

1. Background

The most recent contract between the Respondent and the Union was effective from April 1, 1989, to March 31, 1992,[3] and on April 1, the Union began an economic strike. All bargaining unit employees participated in the strike and were permanently replaced by the Respondent.

The parties stipulated that employees who were hired before about April 10 completed a form with the heading ''*EMPLOYEE TO COMPLETE PERSONNEL RECORD*.'' The form included questions about the individual's union membership. The judge credited former replacement employee Tandy's testimony that he applied for employment on March 31, and that it was not until he and approximately eight other individuals had filled out various forms, including the one discussed above, that they were told that they were hired.

2. The decertification petitions

According to employee Scott Paul, he initiated a petition after a conversation with employee David Roberts,[4] in which Roberts brought to his attention that a petition might help the replacement workers keep their jobs. Paul explained, ''We were running scared at that time. . . . [O]ur jobs didn't look to good. We were hired as part-time help. And for several months we all felt that at any day we'd lose our jobs.'' Paul further testified that ''we didn't feel [the petition] would have any impact. But if it did, we were hoping it was just showing that we didn't wish to be represented by the union.''

Employee Dave Roberts also initiated a petition.[5] Roberts testified that he approached the employees

[1] There are no exceptions to these conclusions.

[2] After the hearing, the judge, over the General Counsel's objection, allowed the Respondent to submit evidence regarding the number of striking employees in the bargaining unit. The General Counsel had opposed the Respondent's request to submit the evidence, on the grounds that the evidence was not newly discovered. The General Counsel excepts to the judge's ruling on the request and to the judge's findings regarding the number of unit employees. As we find that the decertification petitions were tainted, we find it unnecessary to pass on issues related to the size of the bargaining unit.

[3] All dates are 1992 unless otherwise indicated.

[4] The petition stated that the signers:

> [D]o **NOT** want the Teamsters Local Union or any other Union to be involved with or having any say over the regulations and/or procedures for MATHEWS READYMIX, INC.
>
> Furthermore, we the undersigned, do not want to join the Union now and will not join the Union in the future.

[5] That petition stated that the signers did ''NOT WISH TO BE REPRESENTED IN LABOR RELATIONS MATTERS BY TEAM-

Continued

about signing the petition by stating that he believed that as a group they ''could voice a legal opinion as far as the strike was concerned. And possibly, possibly in a sense force the company not to negotiate any further with the union.''

On April 11, the Respondent held a safety meeting at the Depot Restaurant in Oroville, California, for all recently hired drivers from the Respondent's three facilities. The judge credited testimony that a decertification petition was circulated during a break and that members of management were in a position to observe this activity. Employee McCasland testified that during a question-and-answer period in the meeting the employees, in response to a question, were told that they would not be replaced when the strike was over. McCasland asked about the petition which was circulating. The chief executive officer of the Respondent's parent company responded that whether or not the employees signed the petition was none of the Company's business.

At the end of the safety meeting the Respondent's special projects director, Zelie, agreed to employee Roberts' request to allow the drivers to meet, without management. Roberts testified that after management left, he announced that he and Paul had copies of petitions to basically decertify the Union and that it would probably help the drivers to avoid any more conflict with the strikers. During this ''drivers only'' meeting some signatures were obtained on the petitions.

Paul testified that on April 13 he gave the petition to Supervisor Steve Gillis, explaining that this was a petition and requesting that Gillis give it to upper management. Paul stated that at some later point the petition was returned to him in a sealed envelope at the facility in Yuba City. He returned the petition to the Respondent only a few days before the hearing. According to Roberts, he also gave his petition to Supervisor Gillis on Monday, April 13, with the request that Gillis forward it to the appropriate higher manager. A few days later, the petition was returned to Roberts in an envelope at the Yuba City facility. Roberts obtained more signatures on the petition and returned the petition to the Respondent. At some point the petition was once again returned to Roberts.

The Respondent's special projects director, Zelie, testified that Supervisors Gillis and Richter brought copies of the petitions into the office where he copied them and returned the originals to them. Zelie testified that he cross-checked the signatures on each of the petitions with the payroll timecards.

The record does not contain clear evidence regarding the circumstances of the circulation of the additional petition, or petitions, at the Chico facility. Employee Roberts testified that he may have written a petition on the request of someone from the Chico facility. Roberts testified that this occurred at a meeting, but he was not sure about the date of that meeting.[6] Zelie gave testimony regarding three documents, containing the signatures of employees who worked at the Chico facility. The documents, in essence, state that the employees who signed the documents do not want to be represented by Teamsters Local 137 or any other collective-bargaining representative.[7] Zelie stated that he believed he received these documents from Richter who is the plant manager at Chico. Richter had told him that employee David Langlois was passing the petition at Chico. Zelie testified that each time the document was brought to him he copied the original and returned it, and that twice the document was returned with additional signatures. Zelie testified that he compared these signatures against other signatures of the employees and concluded that they were the same.

According to the credited testimony of employee McCasland, on Monday, April 13, he and Plant Manager Richter had a conversation at the Oroville facility. Richter asked why McCasland had not signed the petition. McCasland stated that he did not like the way the drivers were ''pushing'' him to sign. Richter asked him to consider thinking about it, and McCasland responded that he would. The next day McCasland gave Richter a petition stating that ''I do not wish to be represented in labor relations matters by Teamsters Local #137 or any other collective bargaining agency.'' Richter also approached employee McCasland on two later occasions. On the first of these, Richter requested that McCasland approach employee Magby and on the second occasion Richter requested that McCasland approach new employee Ken Harris regarding signing the petition. On both occasions McCasland did as requested and approached the employees. Magby refused to sign the petition. Ken Harris wrote a statement to the effect that he did not want or need a union. Harris gave the statement to McCasland who later gave it to Richter.[8]

On April 21, the Respondent informed the Union that it was withdrawing recognition based on a good-faith doubt that the Union represented a majority of its bargaining unit employees.

B. *Discussion*

As noted, the parties stipulated that employees who were hired before about April 10, completed a form

STERS #137 OR BY ANY OTHER COLLECTIVE BARGAINING AGENCY.''

[6] The Respondent held several meetings for the replacement workers.

[7] The first of these documents has two signatures dated April 13. The second document has the first two signatures and an additional three signatures, two of which are dated April 15. The last signature is dated April 19. The final document has the five signatures which are contained on the second document plus an additional signature, which is dated April 20.

[8] Harris had already signed a petition.

with the heading ''*EMPLOYEE TO COMPLETE PERSONNEL RECORD*.'' The form asked, among other things, whether the individual was a member of a trade union, and if so, which union, and the union's address.

The judge found that the questions regarding union membership constituted unlawful interrogation of applicants and therefore violated Section 8(a)(1) of the Act. He further found, however, that the interrogation did not taint subsequent decertification petitions on which the Respondent based its claim of good-faith doubt. Counsel for the General Counsel contends that regardless of whether the individuals were hired before or after completing the form, the questions regarding union membership were coercive and tainted the petitions. We agree.

First, the test for determining the legality of employee interrogation regarding union sympathies is ''whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with employees in the exercise of their statutory rights.''[9] Further, ''questions involving union membership and union sympathies in the context of a job interview are inherently coercive and thus interfere with Section 7 rights.''[10] Here, the evidence shows that these individuals completed the form either while they were applicants or immediately after being hired. They were hired as replacements for striking employees.[11] Although the form may have been used as a standard practice in the past, there is no evidence that these individuals were aware of this or that they were provided with any explanation as to why the questions regarding union membership were included on the form. In these circumstances, questions regarding union membership of either an applicant or a newly hired employee reasonably tend to interfere with the individual's exercise of Section 7 rights. We therefore find that all of the replacement employees who completed the form that included questions regarding union membership were coercively interrogated in violation of Section 8(a)(1).

We turn next to the question whether the coercive interrogations tainted the decertification petitions. An incumbent union is afforded a presumption of continued majority status. An employer may rebut the presumption, inter alia, by showing that it had a good-faith doubt of the Union's majority status based on objective considerations.[12] Here, the judge found that the Respondent had a good-faith doubt based on decertification petitions signed by a majority of the bargaining unit. He therefore concluded that the Respondent did not violate Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union, by failing to furnish information requested by the Union, and by unilaterally changing terms and conditions of employment.

The judge noted that the ''good-faith doubt'' defense must be raised in a context free of unfair labor practices. He further observed, however, that to invalidate the defense, there must be some causal relationship between the unfair labor practices and the basis for the claimed doubt. The judge found that the personnel records form had been used for many years and was not designed for the purpose of undermining employee support for the Union. He therefore found no causal connection between the interrogation and the striker replacements' willingness to sign a petition to decertify the Union.

We disagree and find that the interrogations tainted the decertification petitions. Accordingly, the petitions cannot be relied on to support a claimed good-faith doubt of the Union's continued majority status. Contrary to any implication in the judge's decision, unfair labor practices need not be explicitly designed to undermine union support in order to taint subsequent employee expression of disaffection. As recognized by the judge here, the good-faith doubt defense may not be raised in the context of illegal antiunion activities. See *Colonial Manor*, 188 NLRB 861 (1971), citing *Celanese Corp*., 95 NLRB 664, 673 (1951), overruled on other grounds *Hawaii Meat Co. Ltd*., 139 NLRB 966, 968 (1962). In *Hearst Corp*., 281 NLRB 764 (1986), enfd. mem. 837 F.2d 1088 (5th Cir. 1988), also cited by the judge in this case, the Board did state, in dictum, that decertification petitions signed by a majority of employees will generally be sufficient to cast doubt on a union's continued majority status if the employer has not engaged in earlier conduct *designed* to undermine the union. In *Hearst* the Board had found numerous violations of the Act clearly designed to undermine support for the union, and thus the issue here posed was not presented to the *Hearst* Board. Moreover, none of the cases cited in *Hearst* requires that an employer's illegal conduct be designed to undermine union support in order for that conduct to taint a decertification petition. In *Hotel & Restaurant Employees Local 19 v. NLRB*, 785 F.2d 796, 799 (9th Cir. 1986), affirming *Burger Pits, Inc*., 273 NLRB 1001 (1984), and cited in *Hearst*, the court stated that to taint a decertification petition there must exist an unfair labor

[9] *Service Master All Cleaning Services*, 267 NLRB 875 (1983), citing *Lippincott Industries*, 251 NLRB 262 (1980), enfd. 661 F.2d 112 (9th Cir. 1981).

[10] Id., citing *Bendix-Westinghouse Automotive Air Brake Co*., 161 NLRB 789 (1966); *McCain Foods*, 236 NLRB 447 (1978), enfd. sub nom. *NLRB v. Eastern Smelting Corp*., 598 F.2d 666 (1st Cir. 1979). See also *Active Transportation*, 296 NLRB 431 fn. 3 (1989), enfd. mem. 924 F.2d 1057 (6th Cir. 1991), noting that under the totality of the circumstances test, ''an applicant may understandably fear that any answer he might give to questions about union sentiments posed in a job interview may well affect his job prospects. [Citation omitted.]''

[11] Some of these individuals were hired by the Respondent before the strike began in anticipation of the strike.

[12] *Columbia Portland Cement Co*., 303 NLRB 880, 882 (1991), enfd. 979 F.2d 460 (6th Cir. 1992).

practice prior to the withdrawal of recognition that would ''either affect the Union's status, cause employee disaffection, or improperly affect the bargaining relationship.'' (Citations omitted.)

In *Williams Enterprises*, 312 NLRB 937 (1993), affd. 50 F.3d 1280 (4th Cir. 1995), the Board found that an agent of a successor employer had told union-represented employees of the predecessor, who had applied for employment with the successor, that the successor ''did intend to operate the . . . plant as a nonunion plant,'' and that this tainted a decertification petition presented to the successor 4 months later. The petition therefore could not be used to support a good-faith doubt of continued majority status and justify a refusal to bargain with the union. In so finding, the Board considered certain factors relating unlawful conduct to decertification activity that is alleged to support withdrawal of recognition. These factors are set out in *Master Slack Corp*., 271 NLRB 78, 84 (1984).

> (1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

Examining the presence of those factors here, we note that, between March 25 and April 6, approximately 45 applicants or new employees completed the form containing the unlawful interrogation. The Respondent withdrew recognition from the Union on April 21, less than 1 month from the date when the first of the replacement employees applied for employment. Thus, the employees were likely to have remembered the question regarding union membership on the personnel records form when they signed the petitions to decertify the Union.

As noted above, there is no evidence that the striker replacements completing the form were aware that the form had previously been used. Similarly, there is no evidence that they were provided with any explanation why the questions regarding union membership were included on the form. They were, however, well aware of the strife between the Respondent and the incumbent Union and were concerned, as replacement employees, about the security of their jobs. Further, after the initial interrogation regarding union membership contained on the personnel form, the Respondent continued to engage in conduct consistent with the antiunion atmosphere created by that interrogation. We note, for example, the judge's findings that the Respondent interrogated employee McCasland regarding his failure to sign a decertification petition and solicited him to prepare and sign such a petition. Furthermore, the Respondent solicited McCasland to approach other employees to sign similar petitions.

Although the evidence does not establish that the Respondent intended to coerce the employees by the questions regarding union membership contained on the personnel form, that is not controlling. Section 8(a)(1) does not turn on motive, and thus employees were unlawfully coerced even if the Respondent did not intend that result. The question in this case is whether it is reasonable to infer that a causal relationship exists between the Respondent's coercive interrogation of these employees and their subsequent willingness to sign the decertification petition.[13] That question depends on the nature and extent of the coercion, not on the absence of bad motives underlying the coercion.[14]

Given the foregoing circumstances, we find it reasonable to infer that the unlawful interrogation would cause employees to become disaffected from the Union. The interrogation was directed to approximately 34, or two-thirds, of all of the employees who later signed the decertification petition. Further, the interrogation occurred in connection with the hiring process, thus employees could reasonably believe that their hire or retention was dependent on their rejection of the Union. Finally, we note the brevity of time between the unlawful interrogation and the employees' ostensible rejection of the Union.

Respondent notes that the employees were replacements, and argues that this fact explains their decertification efforts. We disagree. The fact that an employee becomes a strike replacement does not, of course, necessarily mean that the employee is antiunion.[15] And, in the instant case, the replacements signed the petition only after they were subject to coercive interrogation during the hiring process that would likely make them eager to prove to the Respondent that they were free of any prounion sentiments. In these circumstances, we are not persuaded that the employees signed the petition *because* they were replacements.

We therefore find that the Respondent could not rely on the petitions to support a good-faith doubt of lack of majority support for the Union and that it violated Section 8(a)(5) and (1) by withdrawing recognition from and refusing to bargain with the Union.[16]

---

[13] See *Williams Enterprises*, supra at 939.

[14] For the reasons explained above, and because it is contrary to consistent Board law as developed and applied in other cases, the statement in *Hearst*, supra, suggesting that an employer's conduct cannot be found to have tainted a subsequent decertification petition unless that conduct was designed to undermine the union is overruled.

[15] *NLRB v. Curtin Matheson Scientific, Inc*., 494 U.S. 775 (1990); *Station KKHI*, 284 NLRB 1339 (1987).

[16] Member Fox would also find that the petitions were tainted by the circumstances surrounding the solicitation of signatures during the break in the mandatory safety meeting called by the Respondent

Because we have found that the Respondent unlawfully withdrew recognition from the Union, we also find that the Respondent violated Section 8(a)(5) and (1) by unilaterally instituting new terms and conditions of employment.[17]

The complaint alleged that the Respondent failed to furnish the following information that the Union requested: (1) current hourly rate for all classifications; (2) medical plan benefits summary of the plan; (3) cost of the plan per employee; (4) cost of the plan per employee for out-of-pocket expenses; (5) vacation benefits schedule and method of earnings; (6) holiday pay, if any; (7) dispute resolution method; and (8) pension plan and level of benefits. In its answer, the Respondent admitted that the information listed in the complaint was some of the information requested by the Union and noted that the Union also requested the names, addresses, social security numbers, and telephone numbers for replacement workers. The complaint was amended to include the additional information. The Respondent admits that it failed to furnish the Union with the information but denies that it was necessary for and relevant to collective bargaining.

With the exception of the social security numbers, it is well settled that such information regarding unit employees[18] is presumptively relevant to and necessary for purposes of collective bargaining.[19] Thus, a union is not required to prove the precise relevance of such information unless the Respondent submits evidence sufficient to rebut the presumption of relevance.[20] Here, the Respondent has not attempted to rebut the relevance of the information requested by the Union. Instead, it has refused to provide the information, asserting that the Union no longer represents a majority of its employees. We therefore find that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the requested information, which is relevant to, and necessary for, the Union's performance of its duties as the exclusive collective-bargaining representative of the bargaining unit.[21]

AMENDED CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) of the Act by interrogating applicants for employment or new hires, by interrogating employees regarding their failure to sign petitions seeking to decertify the Union, and by soliciting employees to solicit other employees to sign such petitions.

4. The Respondent has violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Union as the exclusive bargaining representative of the appropriate bargaining unit, by unilaterally implementing changes in terms and conditions of employment of unit employees, and by failing to provide the Union with requested information which is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the bargaining unit.

5. The unfair labor practices set forth in paragraphs 3 and 4 above constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

on April 11. The judge found that employees circulated the antiunion petitions during this break, and that management representatives were present while they were being circulated. The mere presence of the management representatives, during a break in a meeting that management required the employees to attend, in circumstances where the management representatives could watch the petitions being circulated, could reasonably lead employees to believe that management authorized the circulation of the petitions and wanted the employees to sign them.

The judge's reliance on *Eddyleon Chocolate Co*., 301 NLRB 887 (1991), in support of his conclusion that the petitions were not tainted by management presence in these circumstances, is misplaced. *Eddyleon Chocolate* stands for the proposition that management may observe union activity that takes place in the open without being deemed guilty of surveillance in violation of Sec. 8(a)(1). In this case, however, because it created the reasonable impression of management approval of the petitions, the mere presence of management representatives while the petitions were being circulated during the break in the mandatory safety meeting tainted the signatures obtained during that break, without regard to whether or not it constituted unlawful surveillance. Accordingly, Member Fox would find that the petitions were tainted for this reason as well as those cited by her colleagues.

[17] The Respondent and the General Counsel stipulated to the following:

> Starting on about June 18, 1992, Respondent began providing benefits to employees, as contained in Respondent's Employee Handbook First Edition, attached at *Joint Exhbit 2(a)*, and in Centex Corporation Employee Benefits handbook, attached as *Joint Exhibit 2(b)*. Respondent has changed some terms and conditions of its drivers and mechanics in ways that differ from Respondent's final offer to the Union [Jt. Exhs. 1(a) and (b)] by, among other things, on about June 18, 1992, changing the maximum amount of vacation its drivers and mechanics can earn, ceasing to contribute to the Western Conference of Teamsters Pension Trust Fund, instituting a profit sharing plan, and requiring a co-payment of at least $60 per dependent per month for dependent health and welfare coverage. Respondent and the General Counsel agree that the specifics of these and other changes can be determined during the compliance stage of this proceeding if the Administrative Law Judge concludes that Respondent withdrew recognition from the Union in violation of Section 8(a)(1) and (5) of the Act.

[18] The Respondent does not argue that the replacements are not unit employees.

[19] See *Grand Islander Health Care Center*, 256 NLRB 1255, 1256 (1981); *Dynatron/Bondo Corp*., 305 NLRB 574 (1991), enfd. 992 F.2d 313 (11th Cir. 1993).

[20] *Grand Islander Health Care Center*, supra.

[21] We exclude the social security numbers which have not been shown to be relevant and necessary.

AMENDED REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act, we shall order the Respondent to cease and desist.

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to cease and desist and, on request, to bargain with the Union as the exclusive representative of the employees in the appropriate unit concerning terms and conditions of employment. We shall order the Respondent, on request, to rescind the changes in the terms and conditions of employment, as determined in the compliance stage of this proceeding in accordance with the parties' stipulation. We shall also order the Respondent to furnish to the Union the following information: current hourly rate for all classifications; medical plan benefits summary of the plan; cost of the plan per employee; cost of the plan per employee for out-of-pocket expenses; vacation benefits schedule and method of earnings; holiday pay, if any; dispute resolution method; pension plan and level of benefits; and the names, addresses, and telephone numbers for replacement workers.

ORDER

The National Labor Relations Board orders that the Respondent, Mathews Readymix, Inc., Gridley, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating applicants for employment or new hires regarding their union membership and sympathies.

(b) Interrogating employees regarding their failure to sign petitions seeking to decertify General Teamsters, Professional, Health Care and Public Employees, Local 137, International Brotherhood of Teamsters, AFL–CIO.

(c) Soliciting employees to sign petitions seeking to decertify the Union.

(d) Soliciting employees to solicit other employees to sign petitions seeking to decertify the Union.

(e) Withdrawing recognition from and refusing to bargain with the Union as the exclusive collective-bargaining representative of a unit of employees defined as readymix truckdrivers, mechanics, and aggregate transport drivers at the Respondent's facilities in Yuba City, Chico, Oroville, and Gridley, California.

(f) Unilaterally implementing changes in terms and conditions of employment of unit employees.

(g) Refusing and failing to provide to the Union requested information which is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the bargaining unit employees.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Recognize and bargain, on request, with General Teamsters, Professional, Health Care and Public Employees, Local 137, International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of the above-described unit.

(b) On request, rescind unilateral changes in terms and conditions of employment as determined in the compliance stage of this proceeding, in accordance with the parties' stipulation.

(c) Furnish the Union the following information: current hourly rate for all classifications; medical plan benefits summary of the plan; cost of the plan per employee; cost of the plan per employee for out-of-pocket expenses; vacation benefits schedule and method of earnings; holiday pay, if any; dispute resolution method; pension plan and level of benefits; and the names, addresses, and telephone numbers for replacement workers.

(d) Make whole the unit employees for losses, if any, of earnings and other benefits suffered as a result of the unlawful implementation of unilateral changes, and reimburse them for any medical expenses as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and make contributions on their behalf to union trust funds,[22] with any additional amounts necessary to make the funds whole to be computed in accordance with *Merryweather Optical Co*., 240 NLRB 1213 (1979).

(e) Preserve and, within 14 days from the date of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities located at Chico, Yuba City, Oroville, and Gridley, California, copies of the attached notice marked ''Appendix.''[23] Copies of the notice, on forms

[22] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since March 25, 1992.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HIGGINS, dissenting in part.

I agree that the Respondent's personnel form constituted an unlawful interrogation of the strike replacements. However, I do not agree that there was a causal nexus between that violation and the decision of the replacement employee to seek to decertify the Union.

Concededly, the Board need not presume that strike replacements are antiunion.[1] On the other hand, there is no presumption that the replacements are prounion.[2] In any event, that is not the issue in this case. The issue here is whether strike replacements, who have signed an antiunion petition, did so because of the Respondent's 8(a)(1) violation. The evidence yields a negative answer, and the judge so found. In this regard, I note that: (1) the replacements were not in the unit when the Union was selected as the representative of unit employees; (2) the replacements crossed the Union's picket line, and began work for the Respondent during the Union's strike; (3) the replacements were concerned that they would be terminated when the strike ended. Indeed, it was this last matter that prompted the employees to seek the Union's ouster. In these circumstances, it is a legal fiction to assume that the 8(a)(1) violation was a trigger for the replacements' effort to get rid of the Union. There is no evidence that any replacement even mentioned this violation before, during, or after the process of obtaining signatures against union representation. Finally, it is unreasonable to assume that the question on the personnel form (asking whether the individual was a member of the union) would, by itself, make the individual eager to prove to the Respondent that he/she was antiunion.

In short, there is no causal nexus between the 8(a)(1) conduct and the replacements' desire to get rid of the Union. The result reached by my colleagues deprives the employees of the Section 7 right to seek decertification, and I dissent, from the result.[3]

[1] *NLRB v. Curtin Matheson Scientific, Inc*., 494 U.S. 775 (1990); *Station KKHI*, 284 NLRB 1339 (1987).

[2] Id.

[3] In reaching their results, my colleagues have overruled a statement of law in *Hearst Corp*., 281 NLRB 764 (1986). The statement is that an employer's conduct will not taint a subsequent decertification effort unless the conduct was *designed* to undermine the union. I find it unnecessary to apply the statement. That is, I simply find no causal nexus between the conduct and the decertification effort. Consequently, I do not pass on the validity of the *Hearst* statement.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT coercively interrogate applicants and employees by having them complete forms which request information regarding union membership.

WE WILL NOT coercively interrogate employees regarding their failure to sign petitions repudiating General Teamsters, Professional, Health Care and Public Employees, Local 137, International Brotherhood of Teamsters, AFL–CIO as their representative.

WE WILL NOT solicit employees to sign petitions repudiating the Union as their representative.

WE WILL NOT request employees to solicit other employees to sign petitions repudiating the Union as their representative.

WE WILL NOT withdraw recognition from and refuse to bargain with the Union as the exclusive collective-bargaining representative of the bargaining unit.

WE WILL NOT unilaterally institute new terms and conditions of employment.

WE WILL NOT refuse and fail to provide to the Union requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and bargain, on request, with General Teamsters, Professional, Health Care and Public Employees, Local 137, International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of the bargaining unit.

WE WILL, on request, rescind unilateral changes in terms and conditions of employment.

WE WILL furnish the Union the following information: current hourly rate for all classifications; medical plan benefits summary of the plan; cost of the plan per employee; cost of the plan per employee for out-of-pocket expenses; vacation benefits schedule and method of earnings; holiday pay, if any; dispute resolution method; pension plan and level of benefits; and the names, addresses, and telephone numbers for replacement workers.

WE WILL make whole the unit employees for any losses of earnings and other benefits suffered as a result of our unilateral changes, and reimburse them for any medical expenses plus interest and make contributions on their behalf to union trust funds.

MATHEWS READYMIX, INC.

Paula R. Katz, Esq., for the General Counsel.
John D. McLachlan, Esq. (Fisher & Phillips), of Redwood City, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Marrysville, California, on April 29 and 30, 1993. The charge was filed on June 4, 1992, by General Teamsters, Professional, Health Care and Public Employees, Local 137, International Brotherhood of Teamsters (the Union). An amended charge was filed on July 28, 1992. On July 30, 1992, the Regional Director for Region 20 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing alleging a violation by Mathews Readymix, Inc. (the Respondent) of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The complaint was amended at the hearing.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel and counsel for the Respondent. On the entire record,[1] and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a California corporation with places of business located in Chico, Yuba City, and Oroville, California, and with an office in Gridley, California, engaged in the business of manufacturing and distributing readymix concrete. In the course and conduct of its business operations the Respondent annually purchases and receives products valued in excess of $50,000 directly from points outside the State of California. It is admitted, and I find, that the Respondent is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted, and I find, that the Union is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the complaint are whether the Respondent violated Section 8(a)(1) of the Act by soliciting employees to sign deauthorization petitions, and whether the Respondent violated Section 8(a)(5) and (1) of the Act by unlawfully withdrawing recognition from the Union on or about April 21, 1992.

B. *The Facts*

The Respondent and the Union have been parties to a succession of collective-bargaining agreements for approximately 30 years. The most recent collective-bargaining agreement extended from April 1, 1989, to March 31, 1992.[2]

On April 1, the Union commenced an economic strike against the Respondent. All of the unit employees went out on strike, and the strike is continuing. On about April 8, the Respondent informed the Union, during negotiations, that the striking employees had been permanently replaced. By letter dated April 21, the Respondent wrote to the Union confirming a telephone conversation earlier that day. The letter advises the Union that a majority of the unit employees have indicated that they no longer desire to be represented by the Union, that the Respondent has a good-faith doubt that the Union continues to represent a majority of its employees, and that the Respondent ''hereby withdraws recognition of [the Union] as the representative of its employees.''

All of the replacement employees hired prior to about April 10 filled out a form furnished them by the Respondent with the heading:

EMPLOYEE TO COMPLETE PERSONNEL RECORDS

The form requests the following information: social security number, name, married or single, address, phone number, birth date, number of dependents, spouse's name and phone number, whether the individual is a ''Member of Trade Union'' and, if so, the address of the Union, California driver's license number, type of license, date of expiration, expiration of medical card, and the name, address and phone number of the individual to notify in case of emergency. At the bottom of the form is the heading ''*EMPLOYER TO COMPLETE.*'' Under this heading is a space for the signature of a manager who has verified the ''above information,'' and underneath that are spaces for ''DATE HIRED,'' and ''RATE HIRED AT.''[3]

[1] The General Counsel's unopposed motion to correct transcript is granted.

[2] All dates or time periods hereinafter are within 1992 unless otherwise specified.

[3] This form was discontinued on about April 10 at the direction of the Respondent's attorney, who advised the Respondent that the

Thomas Tandy, one of the Replacement employees, testified that he had previously filled out an employment application in February. In mid-March he was contacted by Plant Manager Bill Richter, who explained that there was possibly going to be a strike and asked whether Tandy was interested in being hired as a replacement worker. Tandy said that he was. Richter said that the Respondent would be conducting interviews at a later date and that Tandy would be contacted and brought in for an interview. Tandy again contacted the office at a later date and was told that Craig Zelie, special projects director, would be conducting interviews the next morning.

Tandy appeared for the interview the following morning, March 31. According to Tandy there were approximately eight other applicants present. Special Projects Director Zelie, the Respondent's representative at the meeting, advised the individuals that there was probably going to be a strike, and that if they were hired they would be hired as permanent replacements for the strikers. Then he handed out approximately five forms, including the above-described ''Personnel Records'' form, which the individuals were requested to complete. After being completed, the forms were handed back to Zelie, who then informed all of the individuals that ''as far as he knew'' they were hired as of April 1, the following day, and that they were to report to the Respondent's Anderson, California plant to be trained as mixer drivers.

Tandy testified that he did not consider himself to be hired until the conclusion of the meeting when Zelie announced that all of the applicants who were present had been hired.

Zelie testified that the only form filled out by applicants for employment is an employee application form, and that the forms filled out by Tandy and the other individuals on March 31, were forms required to be completed only after the employees had been hired. These forms included the afore-mentioned personnel records form, an Immigration Service I-9 form, a safety briefing form, a driver proficiency form, and a vehicle code form regarding drivers' licenses. Thus, as the forms were of the type that requested information from employees who had been hired, rather than from applicants for employment, Zelie maintained that it should have been obvious to the employees that they had been selected to be hired, and had in fact been hired, prior to being required to fill out these various forms.

At the outset of the hearing the Respondent's attorney represented that the personnel records form had been utilized by the Respondent since 1977, and the reference to ''union membership'' was for the payroll clerk who was to notify the appropriate union when a new employee had been hired. Zelie, called as a witness by the General Counsel, testified that this particular form was no longer utilized by the Respondent after approximately April 10, upon the advice of the Respondent's counsel. Zelie, however, was not questioned regarding the aforementioned representation by counsel.

David McCasland was hired by the Respondent on April 1. He worked at the Chico and Oroville, California facilities of the Respondent. Bill Richter, plant foreman, was in charge of both plants. Although McCasland was hired as a mixer driver, he was asked to train the new, inexperienced drivers who had also been recently hired and were working out of both facilities. McCasland was discharged on May 15.

On Saturday, April 11, the Respondent held a meeting for all the drivers. The meeting was held at the Depot Restaurant in Oroville, California. According to McCasland, the meeting was attended by 50 or 60 employees, and was held in a ''pretty large room'' which contained many tables. About four or five employees sat at each table. A large doorway, some 30 feet across, separated this conference room from an adjoining room where buffet tables were located. A buffet lunch for the employees was held prior to the meeting.

Four or five representatives of management were present, including Greg Dagnon, the chief executive officer of Centex Cement Enterprises, the Respondent's parent company. At the beginning of the meeting an attendance form was passed around from table to table, and the employees, who were paid for attending the meeting, were required to sign it. All of the management representatives were introduced, the background of the Company was presented, videos regarding safe driving and proper procedures were shown. McCasland, who wore a button with the designation ''scab,'' which was not given to him by anyone from the Company, introduced himself as ''Scab'' because this is what he had been called by the strikers when he would drive through the gate of the Respondent's facilities. He then gave a talk about driving safety. After the safety and procedure section of the meeting there was about a 10- to 15-minute break, during which refreshments were provided outside the meeting room. People were milling around. McCasland, who was standing alone near the doorway, observed one individual approaching several groups of employees with a piece of paper; he handed it to them, and said it was a petition. The employees, according to McCasland, would look at it and some signed it.

Then the employee, who was identified at the hearing as Scott Paul, approached McCasland and asked if he would sign a petition against representation by the Union. McCasland looked at the paper but did not read it, and he refused to sign it. Paul, according to McCasland, asked if he was a ''fucking coward.'' McCasland replied no, and Paul walked away. McCasland estimated that there were between 5 and 10 signatures on the petition. The meeting resumed about a minute or so thereafter.

During this breaktime there were approximately 30 to 40 employees and several management officials in the meeting room. According to McCasland, the management officials were in the room for only about 5 minutes or so, and were outside the meeting room during most of the break. While they were in the meeting room they were standing up against the wall ''in a little cluster,'' talking with each other; however Plant Foreman Richter, who had also been in and out of the room during the break, was standing by himself in another part of the room. McCasland estimated that the management officials were less than 30 feet away from Paul as he was circulating the petition.

After the break the meeting resumed. The employees were given instructions on the proper way to fill out delivery forms and collect moneys from the customers. There were various questions from the employees. Drivers wanted to know whether they would be replaced once the strike was over. They were assured that they would not be replaced and that the returning strikers would be at the end of the list.

---

question regarding union membership should be deleted. A new form was substituted thereafter.

McCasland asked, ''What about this petition that is being circulated in reference to a union?'' Centex Chief Executive Officer Greg Dagnon stood up and said that this was not up to management or anyone else, and it was none of the Company's business whether the employees signed or did not sign any petition. No management representative said anything about the Union during the meeting except in response to an employees' questions. The meeting ended, and McCasland was one of the first to leave.

The following week, on Monday, April 13, McCasland had a conversation with Plant Foreman Richter at the Oroville facility. Richter asked McCasland why he had not signed the petition, and explained its purpose, namely, that the drivers did not care for union representation. McCasland replied that he did not like the way the drivers were ''pushing'' at him to sign the petition, and stated that he would not sign it. Richter asked him to consider the matter, and McCasland said that he would think about preparing a form of his own, as he did not want to be a part of any group. McCasland did prepare his own petition, and the next day Richter asked him about it. Thereupon, McCasland gave Richter a petition stating that ''I do not wish to be represented in labor relations matters by Teamsters Local #137 or any other collective bargaining agency.'' McCasland testified that if Richter had not requested that he sign the petition, he would not have prepared and submitted the aforementioned document to Richter.

On the next day, April 14, Richter approached McCasland and said that although he could not instruct him to do this, he was merely requesting that McCasland talk to another employee, Robin Magby, about the petition, as Magby was the only other employee who had not signed the petition. McCasland did approach Magby. He advised Magby that he was requested to speak to him about the petition and ask him why he had not signed it. Magby replied that he believed it was a ''bunch of political bull shit and would have nothing to do with it.'' McCasland reported this to Richter.

Several days later, Richter told McCasland that the Respondent had recently hired another driver, Ken Harris, and asked if McCasland would speak with him about signing the petition while McCasland was checking out Harris' driving proficiency. McCasland did so. During this conversation, according to McCasland, Harris said he believed that he had previously signed the petition at the meeting at the Depot Restaurant, but offered to sign another one. McCasland handed him a blank sheet of paper, and Harris then wrote, ''From my point of view, Mathews has [sic] and is fair & understanding with their people. Therefore I ken Harris do not want or need a Union or anyone speaking for me in the job place.'' He handed the paper to McCasland who, in turn, delivered it to Richter.

During one of his afore-mentioned conversations with Richter, McCasland asked why Richter wanted everyone to sign the petition. Richter answered that the Respondent needed 100 percent of the current employees to sign so that there would be more employees against union representation than employees who were on strike; he explained that this was necessary because there would be some employees who would be ''culled out'' by the Respondent.

Scott Paul was hired by the Respondent on March 31. He is a mixer driver. Paul testified that he drafted a petition stating that the undersigned current employees of the Respondent did not want to represented by the Union. He initiated this petition because he felt that it would help the employees' job security, as they were concerned about their jobs. On April 11, Paul obtained a few signatures at the Yuba City plant immediately prior to the luncheon meeting that afternoon. To his knowledge, management was not aware that Scott had prepared or circulated the petition at the Yuba City plant. Paul testified that during both the meeting and the break period the petition was folded up in his shirt pocket; he did not circulate it among the employees. Further, he did not know McCasland, had no conversation with him during the break on that day, and never discussed the petition with him.

Paul testified that at the conclusion of the meeting, Dave Roberts, another employee, who had apparently spoken to management previously, announced that he would like to have a separate drivers' meeting with no management present, and said that it would be greatly appreciated if the drivers would remain. After the management representatives left the room, the doors were shut and Roberts informed the drivers of a petition that he had prepared, explaining that the drivers should sign it if they were not interested in being represented by the Union. He said that his petition, and a similar petition prepared by Paul, would be on the table. There was no further discussion among the drivers. They gathered around the table and signed the petitions and then left the premises.

The following Monday morning Paul obtained the signature of one additional employee on the petition and then handed it to Steve Gillis and asked if he would give it to ''upper management.'' Gillis said he would take care of it. A week or perhaps as much as a month later, the petition was returned to Paul at the Yuba City yard in a sealed envelope.

David Roberts was hired by the Respondent on March 31, as a mixer driver. He prepared a petition stating that the undersigned employees ''Do not wish to be represented in labor relations matters by Teamsters Local #137 or any other collective bargaining agency.'' Nineteen employees signed the petition on April 10, at the Yuba city yard; seven employees signed it on April 11. Roberts testified that at the conclusion of that meeting he asked Zellie whether it would be possible for the drivers to have a short drivers only meeting. Zelie said yes. As the doors to the room were being closed, Roberts asked the drivers to remain for a while for a short drivers meeting. He then announced to the drivers that he and Scott Paul had petitions available to decertify the Union, and that this would probably help to avoid any more conflict with the striking union members. The petitions were placed on a table, and employees signed them. On the following Monday, April 13, he gave the petition to Steve Gillis, plant manager at the Yuba City plant, and asked him to forward it to higher management.[4] A few days later the petition was returned to him at the Yuba City plant and he obtained some additional signatures from some recently hired employees. He again gave the petition to the Respondent, and it was again returned to him a few days later.

Roberts testified that as he was leaving the Depot Restaurant he may have helped some driver from the Chico fa-

[4] One signature on the petition is dated April 13. Apparently this was obtained prior to the time Roberts handed the petition to Gillis.

cility prepare a petition, as someone from Chico wanted a petition to circulate at that facility. Roberts testified that, ''If I wrote one up for him, or if he wrote it out from copying mine. I really don't remember.'' A third petition, with language identical to that appearing on Robert's petition, and obviously in Roberts' handwriting, was circulated at the Chico plant, infra.

Tom Tandy, called as a rebuttal witness by the Respondent, testified that he signed the petition prepared by Roberts. The petition was handed to him or passed to him near the end of the break period. He read it, signed it, and passed it to the person on his left. He did not know who handed the petition to him. He saw other people signing other pieces of paper. At one point he saw Roberts with a piece of paper in his hand, and there were individuals in proximity to him signing a piece of paper. Tandy heard some employee ask another what the petition was for, and the second person said that it was for the purpose of having the Teamsters removed as the representative of the drivers. The petitions were passed during that 10- or 15-minute break. Management representatives were in the room near the doorway. They were not static; they were moving around. It did not appear to him that any management representatives were attempting to observe the employees or the circulation of the petition. He testified that ''that thought never crossed my mind.''

Craig Zelie testified that he received three other petitions from Bill Richter, the plant manager at Chico, on or prior to April 21. A total of seven drivers, working out of the Chico facility, signed the petitions. Zelie was unable to obtain the original petitions, and the Respondent introduced photocopies of them in evidence. The three petitions are, however, merely three different versions of one original petition, which is in the same handwriting and bears the identical language as contained in the petition prepared by employee David Roberts. Zelie testified that Richter brought him the first original petition, and Zelie made a copy of it and returned it to Richter. It contained two names, each dated April 13. Next, Richter again brought him the original petition, but this time with three additional names, two of them dated April 15, and one dated April 19. Zelie again returned this original to Richter. Richter then brought Zelie the original petition a third time, with one additional name, dated April 20. This was also returned to Richter. Richter, who occupies the same positions that he occupied in April, did not testify in this proceeding.

In an affidavit attached to the Respondent's position letter to the Board's Regional Office, Zelie did not mention the existence of the foregoing three petitions, but did discuss the petitions submitted by Scott Paul and David Roberts. Copies of the petitions were not included as a part of the Respondent's position documents, and Respondent's counsel, at the hearing, stated that ''it's well known one need not necessarily show off one's cards when one is dealing with an investigation by the Board.'' Counsel for the General Counsel did not learn of these additional petitions until Zelie was called as a witness during the Respondent's case in chief.

Seven employee witnesses, called by the Respondent, testified that they signed Scott Paul's petition or David Robert's petition at the drivers' meeting which occurred immediately following the Respondent's April 11 meeting at the Depot Restaurant.

C. *Analysis and Conclusions*

Tom Tandy credibly testified that to his knowledge he was merely an applicant for employment on March 31, and was instructed to appear for an interview on that date. It was not until after he and approximately eight other individuals filled out various forms handed to them, including the form requiring information concerning union membership, that he and the other applicants were told by Craig Zelie, the Respondent's special projects director, that they had been hired. The fact that Zelie had known in advance that the applicants had, in fact, been accepted as employees, or that the documents the applicants were required to fill out were of the type only given to employees on their being hired, is not controlling. I find that Tandy and the other applicants did not know they had been hired until Zelie specifically so advised them, and that this occurred after they were required to fill out the forms provided to them by the Respondent.

The applicants were well aware of the strike situation. They were told that there would probably be a strike and that if they were hired it would be as permanent replacements for the strikers. Under these circumstances it appears that the question regarding their union membership may be considered to be coercive in nature, regardless of the Respondent's motivation, as the applicants could reasonably believe that the Respondent would prefer to hire employees who would not be sympathetic to the Union. Accordingly, I find that the question on this form constituted unlawful interrogation in violation of Section 8(a)(1) of the Act. *Service Master All Cleaning Services*, 267 NLRB 875 (1983); *Shannopin Mining Co.*, 302 NLRB 791, 795 (1991); *Active Transportation*, 296 NLRB 431 fn. 3 (1989).

Both David McCasland and Tomas Tandy appeared to have a vivid recollection of the events in question on April 11, during the Respondent's mandatory orientation and safety meeting for the newly hired drivers. I credit their testimony and find that the petitions prepared by Scott Paul and David Roberts were, in fact, circulated among employees in the meeting room during the 10- or 15-minute refreshment break, and that during this time various representatives of management, who were standing near the doorway and perhaps along the walls of the room, would have been able to observe the circulation of the petitions.

The General Counsel maintains that the foregoing scenario, even if not contrived by the Respondent, is sufficiently coercive to taint the petitions, as employees would reasonably tend to believe that the Respondent had authorized the circulation of the petitions and was thereby impliedly soliciting the employees to sign them. Thus, the signatures may not be relied upon by the Respondent to establish a good-faith doubt of the Union's majority status.

In *Eddyleon Chocolate Co.*, 301 NLRB 887 (1991), the Board stated:

> We have no quarrel with the judge's observation that those who choose openly to engage in union activities at or near the employer's premises cannot be heard to complain when management observes them. The Board has long held that management officials may observe public union activity without violating the Act so long as those officials do not ''do something out of the ordinary.

See also cases cited at footnotes 9 and 10 of the above decision; *Gupta Pernold Co*., 289 NLRB 1234 (1988); *Hotschton Garment Co*., 279 NLRB 565 (1986).

There is no contention that the meeting was scheduled by the Respondent to provide an opportunity for the circulation of the petitions, or that it was intended to be anything other than an orientation and safety meeting for new employees. Nor has there been any showing that prior to the circulation of the petitions the Respondent had done or said anything out of the ordinary to cause the employees to believe that the Respondent had instigated the circulation of the petitions during the break period or at any time prior thereto. Further, there is no evidence or contention that the management representatives were actively engaged in attempting to observe who was circulating or signing the petitions; rather, they were simply talking among themselves or standing around the perimeter of the room in an inconspicuous manner. While the General Counsel contends that the mere presence of management, by happenstance rather than design, is sufficient to create a coercive atmosphere which may be relied on to invalidate signatures on the petitions, there appears to be no case precedent in support of this argument.

The General Counsel does not take the position that the petitions are tainted, because the Respondent permitted the drivers to convene a drivers-only meeting at the conclusion of the company meeting even though it is apparent that the Respondent knew or had reason to believe that the drivers' meeting was for the purpose of soliciting signatures on the petitions. Indeed, the drivers-only meeting occurred after Centex Chief Executive Officer Greg Dagnon had previously advised the assembled employees, pursuant to McCasland's question, that the circulation of any petition in reference to the Union was not up to management or anyone else, and that it was none of the Company's business whether the employees signed or did not sign any petition.

I find no merit to the General Counsel's argument that, under the circumstances here, the Respondent's afore-mentioned unlawful interrogation of applicants for employment by means of the personnel records form, as found above, automatically taints their subsequent signatures on the petitions. It is well established that an employer's withdrawal of recognition must be raised in a context free of unfair labor practices. However, in qualifying this general proposition, the Board in *Colonial Manor Convalescent & Nursing Center*, 188 NLRB 861 (1971), stated that this rule is not to be interpreted to impose ''an absolute proscription against questioning a union's majority status in the context of *any* unfair labor practices'' (emphasis in original). The Board in *Colonial Manor* quotes from *Celanese Corp. of America*, 95 NLRB 664, 673 (1951), as follows:

> And, secondly, the majority issue must not have been raised by the employer in a context of illegal antiunion activities, or other conduct by the employer aimed at causing disaffection from the union or indicating that in raising the majority issue the employer was merely seeking to gain time in which to undermine the union.

See also *Hearst Corp*., 281 NLRB 764 (1986), and cases cited therein. In *Hearst* the Board states:

> Decertification petitions . . . will afford an employer a reasonable basis for withdrawing recognition from a labor organization, provided that, prior thereto, the employer has not engaged in conduct designed to undermine employee support for, or cause their disaffection with, the union.

From the foregoing, it is clear that there must be some causal relationship between the employer's prior unfair labor practices and the employees' willingness or desire to sign a petition calling for the union's ouster. It appears that for many years the personnel records form had been completed by employees who had previously been hired and was utilized by the Respondent, which maintained a collective-bargaining relationship with the Union, for legitimate record-keeping purposes; thus, it further appears that the continued use of the same form under the circumstances herein was not designed by the Respondent for the purpose of undermining employee support for, or causing employee disaffection with, the Union. Under the instant circumstances, where applicants accepted employment after first being advised that they were being hired as permanent replacements for striking employees, it appears that any causal connection between the Respondent's preemployment interrogation and the employees' willingness to sign a petition to decertify the Union is tenuous at best; further, the General Counsel has cited no precedent suggesting that unfair labor practices similar or comparable to the unfair labor practices found here are the type which the Board has relied on to render unlawful an employer's subsequent withdrawal of recognition. I therefore find the General Counsel's position in this regard to be without merit.

I credit McCasland's credible and unrebutted testimony and find that Plant Manager Richter interrogated him regarding his failure to sign the petition, and solicited him to prepare and sign such a petition; further, Richter also solicited him to approach other employees and solicit their signatures on similar petitions. Clearly such conduct on the part of the Respondent constitutes coercive interrogation and unlawful interference with employees' rights to engage in or refrain from engaging in union activity. I so find. *Manna Pro Partners*, 304 NLRB 782, 790 and fn. 28 (1991); *Davies Medical Center*, 303 NLRB 195 (1991); *Cypress Lawn Cemetery Assn*., 300 NLRB 609, 627 (1990); *Hearst Corp*., supra.

McCasland's individual petition, solicited by Plant Manger Richter, is clearly tainted and may not be relied on by the Respondent as evidence of the Union's loss of majority status. Employee Robin Magby, solicited by McCasland pursuant to Richter's request, refused to sign a petition. Employee Ken Harris, also solicited by McCasland pursuant to Richter's request, had previously signed a petition on April 11, during or after the meeting at the Depot Restaurant. Thus, as Harris voluntarily signed the petition prior to any employer interference, his signature is not tainted. See *Indiana Cabinet Co*., 275 NLRB 1209 (1985).

The General Counsel also maintains that the Respondent, in effect, solicited the signatures of other employees by returning the original petitions to the employees who had previously submitted them to management. According to the General Counsel, this constituted a clear signal to the solicitors that more signatures were needed and, in fact, thereupon more signatures were obtained. It appears that in this regard the General Counsel is maintaining that such conduct on the part of the Respondent constitutes unlawful solicitation in

violation of Section 8(a)(1) of the Act. However, there is no complaint allegation to this effect, and this issue has not been fully litigated. Accordingly, I also find this contention of the General Counsel to be without merit.

The number of unit employees in the bargaining unit as of April 21, the date of the Respondent's withdrawal of recognition, has been an issue in this proceeding since the very outset. Indeed, it is one of the overriding issue in this proceeding and the record is replete with both testimonial and documentary evidence regarding this matter. During opening arguments, pursuant to my inquiry, the General Counsel stated that the Respondent had represented that prior to the strike there were 41 unit employees, all of whom went out on strike, and that prior to April 21, the Respondent had hired approximately 52 replacement employees. The Respondent's counsel did not contradict this statement by the General Counsel. However, Respondent's counsel did not, during the course of the hearing, present affirmative evidence that, in fact, there were 41 striking employees at all times material here.

Following the hearing, during a conference call, the Respondent's counsel requested permission to augment the record either by stipulation or a proffer of additional evidence, that the number of striking employees in the unit was, in fact, 41, as had been represented by the General Counsel at the outset of the hearing. The General Counsel opposes this request, maintaining that such evidence is not in the nature of newly discovered evidence, and that the Respondent should not be permitted to introduce it after the record has been closed.

By letter dated September 14, 1993, I advised the parties that I believed the record was sufficiently clear regarding the size of the unit on April 21, and I provided the General Counsel with the opportunity of reexamining any supporting documents, which she had been given by the Respondent prior to or during the hearing, to assure herself of the number of unit employees, both strikers and replacements, as of that date. The General Counsel declined.

On the basis of the foregoing, as there has been no real dispute regarding the number of strikers in the bargaining unit as of April 21, and as the Respondent is not attempting to inject a new issue or matter in this proceeding which may require further litigation, but rather is merely requesting that the record reflect what is not in dispute, the Respondent's request to augment the record is granted. Accordingly, I find that on April 21, there were 41 striking employees in the unit.

The record shows that on April 21, the date the Respondent withdrew recognition from the Union, there were 41 striking employees and approximately 52 permanent replacements,[5] all but one of whom, namely, David McCasland, voluntarily and without coercion by the Respondent signed a petition to, in effect, decertify the Union as the collective-bargaining representative of the unit employees. Thus, 51 employees, a clear majority of the approximately 93 unit employees, had indicated to the Respondent that they did not want union representation.

Having previously concluded that none of the 51 signatures was tainted by any unlawful conduct of the Respondent, I find that the Respondent had a good-faith doubt of the Union's majority status on the date it withdrew recognition from the Union. Accordingly, the Respondent's refusal to bargain further with the Union and its implementation of unilateral changes, thereafter, is not violative of Section 8(a)(5) of the Act, as alleged.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has violated Section 8(a)(1) of the Act by interrogating employees, and soliciting employees to sign petitions to cause the Respondent to withdraw recognition from the Union.
4. The Respondent has not engaged in any other violations of the Act.
5. The unfair labor practices set forth in paragraph 3, above, constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Moreover, the Respondent shall be required to post an appropriate notice, attached hereto as ''Appendix.''[Omitted from publication.]

[Recommended Order omitted from publication.]

[5] The General Counsel has not demonstrated that any of the 52 permanent replacements, perhaps with the exception of employee Edward Cassetta who was discharged on the same date the Respondent withdrew recognition (April 21), were no longer employed by the Respondent on that date. Also, it is unclear whether Robin Magby, a mechanic who testified that he became fleet maintenance manager ''towards the end of April,'' should be included in the unit. The General Counsel has the burden of proof in this regard. *Landmark International Trucks v. NLRB*, 699 F.2d 815 (6th Cir. 1983), and cases cited therein.